Bagan Serai Housing Estate Sdn Bhd v Pentadbir Tanah Daerah Seberang Perai Tengah & Anor

HIGH COURT (PULAU PINANG) — CIVIL SUIT NO 22–130 OF 1996
KAMALANATHAN RATNAM J
17 OCTOBER 2001

Land Law *— Administration — Officers — Immunity from being sued — Officer sued in the capacity of his office — Distinction between liability of state authority and officer appointed by state authority — Whether defence under s 22 of National Land Code 1965 applicable*

The plaintiff was the registered owner of the disputed land, part of which was acquired by the state authority under the Land Acquisition Act 1960, while the defendants were officers appointed by the state authority of Penang under the relevant provisions of the National Land Code 1965 ('the NLC'). Following the acquisition and subsequent realienation, the plaintiff took an action against the defendants, praying for declarations and further orders. The defendants, in their defence, relied on the protection accorded under s 22 of the NLC, to be read with s 134(4) of the NLC, and argued that they were clothed with immunity from being sued and that the plaintiff had not pleaded nor averred bad faith against the defendants. The plaintiff's counsel stated that s 22 of the NLC must be read together with s 134(4) of the NLC to realize the full impact of the meaning behind the sections and that if the action was brought against the officer of the state, then s 22 of the NLC required that a plea of bad faith on the part of the officer ought to be raised.

Held:

(1) Section 134(4) of the NLC clearly spells out the distinction that applies to the liability of the state authority and an officer appointed by the state authority. The right to sue the state authority or the officer appointed by the state authority is disjunctive. However, the proviso relating to s 22 of the NLC is expressly applicable only and in respect of the liability of the officer of the state authority (see p 7D–E).

(2) The state government had nothing to do with proceedings under the NLC because it is the state authority that is the pertinent entity and therefore the state government should never have been joined in the proceedings (see p 7H–I); *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors; Lesco Development Corp Sdn Bhd v Yap Chong Lan & Ors* [1984] 2 MLJ 123 followed.

(3) The Pentadbir Tanah Daerah Seberang Perai Tengah, being the land administrator, having charge of the district where the subject property was, was named as the first defendant in his capacity as the authority which initiated the proceedings, resulting in the

eventual forfeiture of the subject property. The Pengarah Tanah dan Galian Pulau Pinang, being the State Director of Land and Mines was named as the second defendant in the capacity of his office in whose name any action to establish any liability on the part of the state authority was to be brought. In the circumstances, the defence provided by s 22 of the NLC was not open to the defendants (see p 8A–C).

[Bahasa Malaysia summary

Plaintif adalah tuanpunya berdaftar tanah yang dipertikaikan, sebahagian daripadanya telah diperolehi oleh pihak berkuasa negeri di bawah Akta Pengambilan Tanah 1960, sedangkan defendan-defendan pula adalah pegawai-pegawai yang dilantik oleh pihak berkuasa negeri Pulau Pinang di bawah peruntukan-peruntukan relevan Kanun Tanah Negara 1965 ('KTN'). Berikutan dengan pengambilan dan pemberian milikan yang kemudiannya, plaintif telah mengambil tindakan terhadap defendan-defendan, dengan memohon untuk mendapatkan pengisytiharan dan perintah-perintah yang selanjutnya. Defendan-defendan, dalam pembelaan mereka, telah bergantung pada perlindungan yang diberikan di bawah s 22 KTN, yang harus dibaca bersama s 134(4) KTN, dan berhujah bahawa mereka kebal daripada didakwa dan bahawa plaintif telah tidak memplid atau pun menegaskan niat jahat terhadap defendan-defendan. Peguam plaintif menyatakan bahawa s 22 KTN mestilah dibaca bersama s 134(4) KTN untuk menyedari penekanan sepenuhnya maksud yang terselindung di sebalik seksyen-seksyen tersebut dan bahawa jika tindakan tersebut telah dibawa terhadap pegawai negeri tersebut, maka s 22 KTN menghendaki supaya satu pli niat jahat di pihak pegawai tersebut haruslah dibangkitkan.

Diputuskan:

(1) Seksyen 134(4) KTN jelas membentangkan perbezaan yang terpakai pada liabiliti pihak berkuasa awam dan seorang pegawai yang dilantik oleh pihak berkuasa awam tersebut. Hak untuk mendakwa pihak berkuasa awam dan pegawai yang dilantik oleh pihak berkuasa awam tersebut adalah disjunktif. Walau bagaimanapun, peruntukan yang berkaitan dengan s 22 KTN adalah nyata terpakai hanya pada dan berhubung dengan liabiliti pegawai pihak berkuasa awam tersebut (lihat ms 7D–E).

(2) Kerajaan negeri tiada kaitan dengan prosiding di bawah KTN kerana pihak berkuasa negeri merupakan entiti yang berkaitan dan oleh itu kerajaan negeri tidak seharusnya disertakan dalam prosiding tersebut (lihat ms 7H–I); *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors; Lesco Development Corp Sdn Bhd v Yap Chong Lan & Ors* [1984] 2 MLJ 123 diikut.

(3) Pentadbir Tanah Daerah Seberang Perai Tengah, yang merupakan pentadbir tanah, yang mengendalikan daerah di mana terletaknya hartanah yang diperihalkan itu, telah dinamakan sebagai defendan pertama dalam kedudukan beliau sebagai pihak berkuasa yang telah memulakan prosiding tersebut, yang menyebabkan hartanah tersebut akhirnya disita. Pengarah Tanah dan Galian Pulau Pinang, sebagai Pengarah Tanah dan Galian Negeri telah dinamakan sebagai defendan kedua dalam kedudukan jawatan beliau di atas nama siapa sebarang tindakan untuk menentukan apa-apa liabiliti oleh pihak berkuasa negeri harus dimulakan. Dalam keadaan tersebut, pembelaan yang diperuntukan oleh s 22 KTN tidak terbuka kepada defendan-defendan (lihat ms 8A–C).]

Notes

For cases on administration of land matters by the state authority, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1731–1745.

Cases referred to

Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors; Lesco Development Corp Sdn Bhd v Yap Chong Lan & Ors [1984] 2 MLJ 123 (folld)

Pow Hing & Anor v Registrar of Titles, Malacca [1981] 1 MLJ 155 (refd)

Legislation referred to

Civil Law Act 1956

Land Acquisition Act 1960

National Land Code 1965 ss 16(2), 22, 97(2), 100, 130(2), 134(4), Sch IX (r 35), Forms 6A, 8A

Yeoh JA (*Mohd Hussain Ibrahim* with him) (*Mohd Hussain Ibrahim & Co*) for the plaintiff.

Alizatul Khair (State Legal Adviser, Pulau Pinang) for the defendants.

Kamalanathan Ratnam J:

Facts

The plaintiff was at all material times the registered owner of land known as Lot No 406, Mukim 1, Province Wellesley Central, estimated to contain an area of 64.3022 acres ('the property'). The defendants are officers appointed by the state authority of Penang under the relevant provisions of the National Land Code 1965 ('the NLC'). On 4 January 1980, United Malayan Banking Corp Bhd ('UMBC') entered a lien holder's caveat on the register document of title of the property for the reason set out in the form of the caveat. Sometime in 1980, about 4.824 acres of the property were

acquired by the state authority of Penang under the Land Acquisition Act 1960, and in 1983 about 5.109 acres of the property were further acquired by the same authority and under the same Act. Following the aforesaid acquisition, the property was resurveyed and a new lot No 4382 was allotted for the balance portion of the property ('balance'). Whilst the plaintiff contended that it was not notified of any of the aforesaid steps and actions taken by the relevant departments, the defendants contended that they were under no obligation to so notify the plaintiff. Subsequently, the plaintiff discovered that the entire balance had been forfeited by the first defendant on 29 April 1993. Later, the same balance was alienated by the state authority of Penang to a third party. It was the plaintiff's belief that the said third party had agreed to pay a premium of about RM27m as consideration for the said alienation. From a search made of the records at the Registry of Land Titles, Penang, the plaintiff discovered that:

(a) the first defendant allegedly issued a purported notice in Form 6A dated 10 December 1992 demanding arrears of quit rent, notice fees and penalty for Lot 4382, Mukim 1, Province Wellesley Central;

(b) the first defendant allegedly forwarded the notice in Sch IX (r 35) of the NLC dated 26 December 1992 to the Registrar of Land Titles, Penang and requested the latter to enter a note of service of the said notice on the register document of title of Lot 4382, Mukim 1, Province Wellesley Central pursuant to s 97(2) of the NLC;

(c) the said notice in Form 6A dated 10 December 1992 was published in the Penang State Gazette Notification No 454 dated 31 December 1992;

(d) the first defendant issued a notice in Form 8A dated 7 April 1993 declaring Lot 4382, Mukim 1, Province Wellesley Central forfeited to the state authority under s 130 of the NLC. The said notice alleged that the aforesaid lot was held under the interim register title;

(e) the said notice in Form 8A dated 7 April 1993 was published in the Penang State Gazette Notification No 115 dated 29 April 1993;

(f) a note of alleged service of notice in Form 6A dated 10 December 1992 on the plaintiff was endorsed by the Registrar of Land Titles, Penang on the register document of title of Lot 406, Mukim 1, Province Wellesley Central on 17 May 1993;

(g) a memorial of the forfeiture of Lot 4382, Mukim 1, Province Wellesley Central was registered by the Registrar of Land Titles, Penang on the register document of title of Lot 406, Mukim 1, Province Wellesley Central on 17 June 1993 purportedly under s 130(2) of the NLC;

(h) subsequently, on a date unknown, both the entries referred to in paras 11(f) and (g) referred to above were cancelled by the Registrar of Land Titles, Penang with a note 'Salah Dimasuki' (Wrongly Entered);

(i) subsequently, on a date unknown, both the entries referred to in paras 11(f) and (g) were endorsed again on the register document of title of

A Lot 4382, Mukim 1, Province Wellesley Central, but without the signature of the Registrar of Land Titles, Penang;

(j) on 30 May 1995, a memorial was endorsed by the Registrar of Land Titles, Penang on the register document of title on Lot 4382, Mukim 1, Province Wellesley Central stating that UMBC disclaimed any interest or right under the lien holder's caveat.

B

Case for the plaintiff

It is the plaintiff's case that the entire forfeiture proceedings is wrong, being contrary to the provisions of the NLC for the following reasons, C namely:

(a) that no notice of demand in Form 6A dated 10 December 1992 of the NLC was at any time served on the plaintiff pursuant to s 97 of the NLC at the plaintiff's registered office;

(b) that the amount demanded by the first defendant under the purported D notice in Form 6A dated 10 December 1992 was far in excess of what was lawfully due;

(c) that the said notice of demand refers to Lot 4382, Mukim 1, Province Wellesley Central in respect of which no register document of title was in existence at the material time;

E (d) that there was non-compliance with s 97(2) of the NLC;

(e) that the purported notice of forfeiture dated 7 April 1993 (in Form 8A) refers to Lot 4382, Mukim 1, Province Wellesley Central in respect of which no register document of title was in existence at the material time;

F (f) that there was non-compliance with s 130(2) of the NLC;

(g) that there was non-compliance with s 100 of the NLC.

The plaintiff therefore prayed for:

(a) a declaration that the entire forfeiture proceedings of the plaintiff's G land known as Lot 4382, Mukim 1, Province Wellesley Central, Penang is wrongful, and by reason thereof the plaintiff is entitled to claim damages from the state authority of Penang pursuant to s 134(4) of the NLC;

(b) an order that the senior assistant registrar of this court be directed to hold an inquiry to assess the damages sustained by the plaintiff as a H consequence of the matters set out above;

(c) interest on the damages so assessed under the Civil Law Act 1956;

(d) costs.

I *Case for the defence*

Whilst contending that their actions were based on the NLC, the linch-pin of the defence was the protection accorded under s 22 of the NLC.

Findings of the court

A

On the day fixed for hearing, by consent, parties agreed that the court ought to decide on the defence of s 22 of the NLC raised by the defendants before proceeding into the merits of the case.

In order to do so, it is relevant to reproduce s 22 of the NLC which reads as follows:

B

> No officer appointed under this Part shall be liable to be sued in any civil court for any act or matter done, or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on him by or under this Act.

Dato' Alizatul Khair for the defendants referred the court to s 134(4) of the NLC. It is relevant therefore to reproduce the said subsection and the related sub-s (1) which reads as follows:

C

> (1) The validity of any forfeiture under this Act shall not be challenged in any court except by means of, or in proceedings consequent upon, an appeal under s 418 against the order of the Land Administrator under s 100 or, as the case may be, s 129; and, notwithstanding anything in any other written law, no such appeal shall be commenced after the expiry of the period of three months allowed for the bringing thereof by the said s 418.
> (2) ...
> (3) ...
> (4) The provisions of sub-s (1) shall not affect the right of any person or body to bring an action of damages against the state authority, or (subject to the provisions of s 22) against any officer appointed by the state authority, in respect of any act or thing wrongfully done, or ordered to be done or omitted to be done, in connection with any forfeiture under this Act.

D

E

The learned state legal adviser thus argued that the defendants were clothed with immunity from being sued. She also pointed out that the plaintiff had not pleaded nor averred bad faith against the defendants. In further support, she relied on *Tenure and Land Dealings in the Malay States* by David SY Wong (1975 Ed), wherein the learned author said at p 408 as follows:

F

> Read together with those provisions of the Government Proceeding Ordinance 1956, the position is plainly that a person who has been deprived of his title or interest in land under the National Land Code as a result of an error occurring in the Land Office cannot institute an action for damages against the officer concerned personally, nor against the Government unless the error has been made by the officer not acting in good faith.

G

It is important to point out the danger of relying on old texts because in *Pow Hing & Anor v Registrar of Titles, Malacca* [1981] 1 MLJ 155, the then Federal Court canvassed this very same issue and said at p 160 as follows:

H

> The learned judge then *suo motu* took the point not raised by either side that setting aside the forfeiture would in fact be tantamount to recovery of the land from the state authority and that this is prohibited by s 29 of the Government Proceedings Ordinance, referring in this connection specifically to the provisions of s 29(1) proviso (b) and (2) thereof. We must wholly dissent. Section 29 of the Government Proceedings Ordinance has no relation or

I

relevance whatsoever to the proceedings instituted by the appellants and no question of recovery of the land arises. Section 134 clearly empowers a challenge to be made by the stipulated procedure to the validity of any forfeiture under the code and provides for such forfeiture to be set aside on the grounds specified therein, and to hold as the learned judge did would be to fly in the face of that provision in the code and conclude on a fallacy that there is in fact an inconsistency and conflict between that provision and s 29 of the Government Proceedings Ordinance when in fact there is none.

Even assuming for a moment for the sake of argument that setting aside a forfeiture under the code would amount to proceedings against the Government of the State of Malacca for the recovery of land, what proviso (b) of s 29(1) of the Government Proceedings Ordinance debars is an order as such for the recovery of land but it permits in lieu thereof an order declaring that the plaintiff in any such proceedings is entitled as against the Government to the land which is exactly the effect of any order of court made under s 134(2) setting aside the order of the collector declaring the land forfeit to the state authority.

Mr Yeoh, for the plaintiff, argued that s 22 of the NLC must be read together with s 134(4) of the NLC to realize the full impact of the meaning behind the sections. He argued that if the action was brought against the officer of the state, then s 22 of the NLC required that a plea of bad faith on the part of the officer ought to be raised. Having considered the arguments of both sides, I am of the view that s 134(4) of the NLC clearly spells out the distinction that applies to the liability of the state authority and an officer appointed by the state authority. The right to sue the state authority or the officer appointed by the state authority is disjunctive. However, the proviso relating to s 22 of the NLC is expressly applicable only and in respect of the liability of the officer of the state authority. If it was the intention of the legislature to also give the same protection to the state authority, then surely sub-s (4) would have been worded like this:

> (4) the provision of sub-s (1) shall not affect the right of any person or body to bring an action of damages (*subject to the provisions of s 22*) against the state authority or against any officer appointed by the state authority ... (Emphasis added.)

I am further fortified in holding this view because of s 16(2) of the NLC which reads as follows:

> Any action, suit or other proceeding relating to land in which it is sought to establish any liability on the part of the state authority shall be brought against the State Director in the name of his office.

Needless to say, it was this requirement of the law that made it incumbent upon the plaintiff to sue the State Director, and the Federal Court in *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors; Lesco Development Corp Sdn Bhd v Yap Chong Lan & Ors* [1984] 2 MLJ 123 made it clear that the state government, as such, has nothing to do with proceedings under the NLC because it is the state authority that is the pertinent entity and that the state government should never have been joined in the proceedings.

However, in *Pow Hing & Anor v Registrar of Titles, Malacca*, the Federal Court made no distinction between the acts of the officers and the state authority that was being sued. I am satisfied that in this case, the Pentadbir Tanah Daerah Seberang Perai Tengah, being the land administrator, having charge of the district where the subject property is, is named as the first defendant in his capacity as the authority which initiated the proceedings, resulting in the eventual forfeiture of the said subject property. I am also satisfied that the Pengarah Tanah dan Galian Penang, being the State Director of Land and Mines is named as the second defendant in the capacity of his office in whose name any action to establish any liability on the part of the state authority is to be brought. In the circumstances, it is my judgment that the defence provided by s 22 of the NLC is not open to the defendants. The matter will proceed on its merits.

Order accordingly.

Reported by Wong Ee Lynn